

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

October 28, 2011

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.:08HD-190

Hawaii

Grant of Perpetual, Non-Exclusive Easement to James A. Scanlon and Sarah N. Scanlon for Access Purposes, Kaiaakea, North Hilo, Hawaii, Tax Map Key:3<sup>rd</sup>/ 3-4-03:11

APPLICANT:

James A. Scanlon and Sarah N. Scanlon, husband and wife, as Tenants by the Entirety, whose 96773.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kaiaakea, North Hilo, Hawaii identified by Tax Map Key: 3<sup>rd</sup>/3-4-03:11, as shown on the attached map labeled Exhibits A and B.

AREA:

.364 acre, more or less.

ZONING:

State Land Use District:	Agriculture
County of Hawaii CZO:	A-5a

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES

OCT 28 2011

CURRENT USE STATUS:

Unencumbered.

CHARACTER OF USE:

Right, privilege and authority to construct, use, maintain and repair a right-of-way over, under and across State-owned land for access purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraisal establishing fair market value, subject to review and approval by the Chairperson.

EASEMENT TERM:

Perpetual.

ANNUAL RENT:

One-time payment to be determined by independent or staff appraisal establishing fair market value, subject to review and approval by the Chairperson.

RENTAL REOPENINGS:

Not applicable.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

See Exhibit C attached.

DCCA VERIFICATION:

Not applicable. The Applicants as landowners are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicants shall be required to:

- 1) Pay for an appraisal to determine initial one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at

Applicant's own cost.

REMARKS:

The subject State property identified as Tax Map Key: 3<sup>rd</sup>/3-4-03:11 is former sugar cane lands. An access driveway from the Mamalahoa Highway to the upper cane fields was built and maintained by the Laupahoehoe Sugar Company under former General Lease No. S-3616. This driveway connected the highway to the "Old Government Road." The County of Hawaii Public Works Department indicated that they have no record of maintenance on this driveway as a public road. The State land is currently unencumbered, however, the staff has received inquiries for use of the land and will be conducting a lease auction in the near future.

The Applicants own property abutting the Mamalahoa Highway. However, access to their property is not permitted by the State Department of Transportation (letter exhibit D) and Applicants are therefore requesting an alternate access through an existing driveway over State land.<sup>1</sup>

The Applicants have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments with results listed below.

<b>County of Hawaii Agencies</b>	<b>Comments</b>
Environmental Management	No Response
Fire Department	No Response
Planning	No Objections
Police Department	No Objections
Public Works	No Comments
<b>State of Hawaii Agencies</b>	<b>Comments</b>
DOH-Environmental Management	No Response
DHHL	No Comments
DLNR-Historic Preservation	No Objections

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<sup>1</sup> Applicants have requested that the Board of Land and Natural Resources grant them the easement on a gratis basis. They assert that they should not have to pay for the easement because they have already acquired rights in the driveway under the doctrines of implied dedication or easement by necessity. See Exhibit E attached. Under the applicable statute, HRS Section 171-13(2), staff feels constrained to recommend that the Board charge market rates for the easement as established by appraisal. Applicants further object to having to pay for liability insurance covering the easement area as required under the standard grant of easement form. But again, staff feels constrained to recommend that the standard easement terms and conditions be imposed on Applicants.

DOT-Highways Division	Comments Below
DLNR- Water Resource Management	No Response
DLNR- Forestry and Wildlife	No Comments
<b>Other Agencies</b>	<b>Comments</b>
Office of Hawaiian Affairs	No Response

The Department of Transportation (DOT) commented that the existing paved driveway was not constructed completely within the proposed easement described in the request. The connection of the driveway to the highway right-of-way actually crosses an existing easement over a corner of private property (TMK: 3<sup>rd</sup>/3-4-03:60) that abuts the highway right-of-way on one side and the subject State land on the other.

This easement request is only for that portion of land under the ownership of the DLNR. If the Applicants wish to use the existing approach from the highway, they will need to confirm with the DOT whether the access is approved. Further, it is Applicants' responsibility to obtain the permission of any private landowners to use any driveway area located outside of the State land.

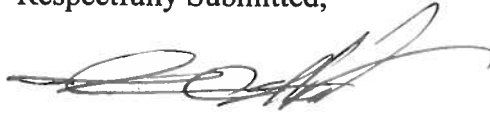
**RECOMMENDATION:** That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the subject requests to be applicable in the event of a change in the ownership of the Applicants' parcel described as Tax Map Key: 3<sup>rd</sup>/3-4-03:59 provided the succeeding owners have not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.
3. Subject to the Applicants fulfilling all of the Applicant requirements listed above, authorize the issuance of a perpetual, non-exclusive easement to James A. Scanlon and Sarah N. Scanlon covering the subject area for access purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
  - A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
  - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: 3<sup>rd</sup>/3-4-03:59, provided however:(1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the

easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;

- C. Review and approval by the Department of the Attorney General; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

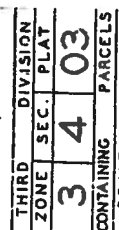


Gordon C. Heit  
Land Agent



APPROVED FOR SUBMITTAL:

  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson

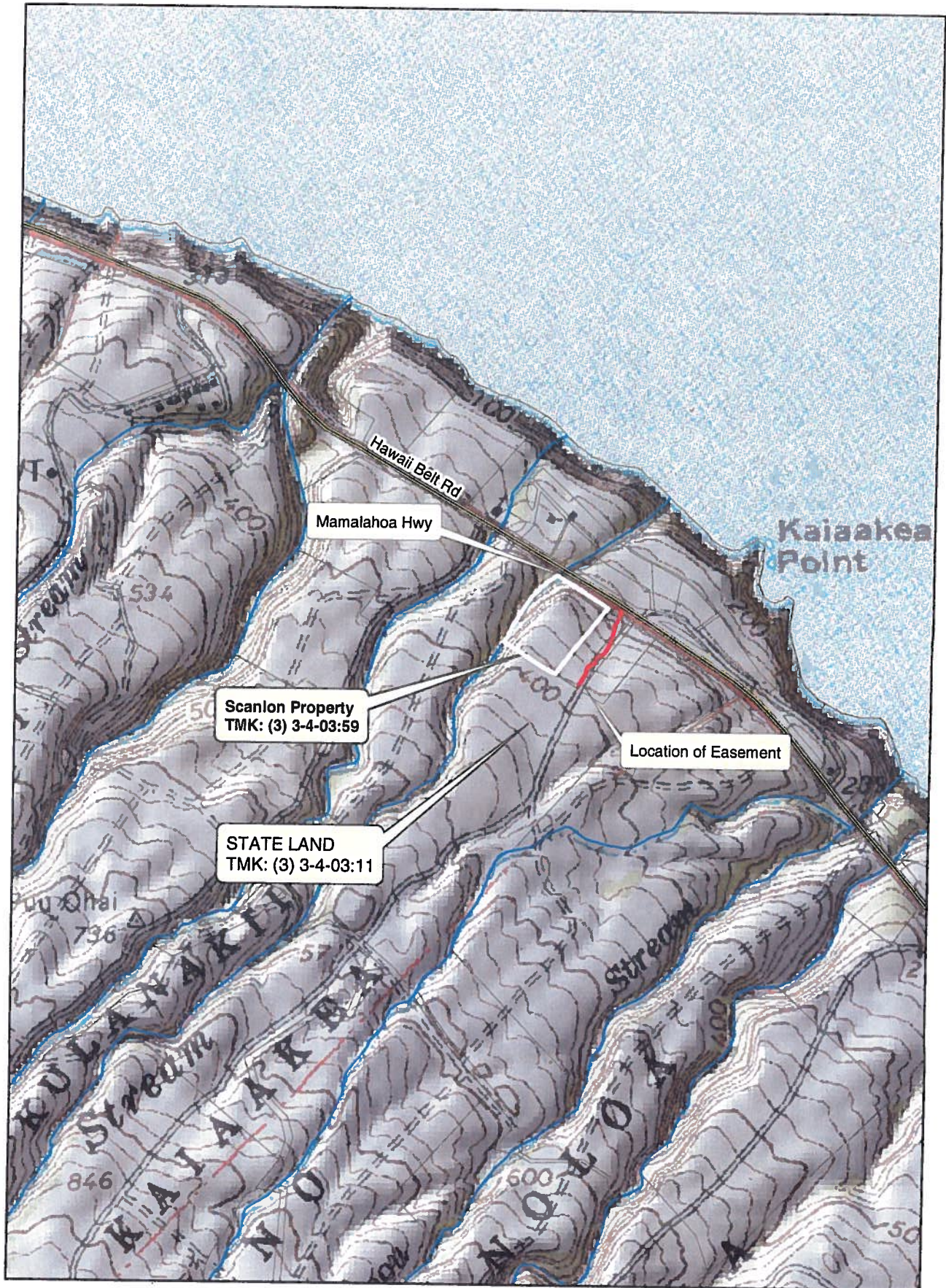


Targets Dropped: 30, 40, 15, 48, 60, 50, 54,  
47, 28, 6, 10, 18, 10, 20,  
41, 39, 37, 39, 33, 37, 46



# KAIAAKEA, NORTH HILO

EXHIBIT B

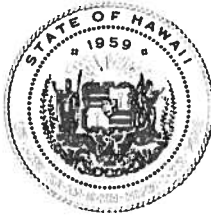


0 310 620 1,240 1,860 2,480 Feet





NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



WILLIAM J. AHA, JR.  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**EXEMPTION NOTIFICATION**

From the preparation of an environmental assessment under the authority of Chapter 343, HRS and Chapter 11-200, HAR

**Project Title:** Grant of Perpetual, Non-Exclusive Easement to James A. Scanlon and Sarah N. Scanlon for Access Purposes

**Project Number:** PSF No. 08HD-190

**Project Location:** Kaiaakea, North Hilo, Hawaii, Tax Map Key: 3<sup>rd</sup>/ 3-4-03:11

**Project Description:** Grant easement of access easement to private landowner over existing driveway on State lands

**Consulted Parties:** State Department of Transportation, Highways Division; County of Hawaii Planning Department

**Exemption Class No.:** In accordance with the "Division of Land Management's Environmental Impact Statement Exemption List", approved by the Environmental Council and dated April 28, 1986, the subject request is exempt from the preparation of an environmental assessment under the following:

Exemption Class No. 1, which states, "Operations, repairs or maintenance of existing structures, facilities, equipment or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

**Exemption Item No.  
And Description:**

The proposed exemption is appropriate because the Applicants James A. Scanlon and Sarah N. Scanlon are requesting an access

**EXHIBIT C**



easement over an existing driveway on State land to access their private land. No new driveway improvements are proposed. Land Division has determined that the granting of an access easement to the Applicants involves a negligible expansion of an existing use. The Applicants' use of an existing driveway will result in no material change or significant cumulative impact. If further actions are taken that result in a material change, Applicants will be required to be in compliance with Chapter 343.

**Recommendation:**

It is recommended that the Board find that the issuance of an access easement to Applicants will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

*WJ Aila, Jr.*  
\_\_\_\_\_  
William J. Aila, Jr., Chairperson  
*2/19/11*  
\_\_\_\_\_  
Date

LINDA LINGLE  
GOVERNOR



**STATE OF HAWAII  
DEPARTMENT OF TRANSPORTATION  
HIGHWAYS DIVISION**

HAWAII DISTRICT  
50 MAKAAALA STREET  
HILO, HAWAII 96720  
TELEPHONE: (808) 933-8866 • FAX: (808) 933-8869

October 29, 2008

**EXHIBIT D**

BRENNON T. MORIOKA  
DIRECTOR

Deputy Directors  
MICHAEL D. FORMBY  
FRANCIS PAUL KEENO  
BRIAN H. SEKIGUCHI  
JIRO A. SUMADA

IN REPLY REFER TO:

HWY-H 08-2.0799

Mr. James Scanlon

Dear Mr. Scanlon:

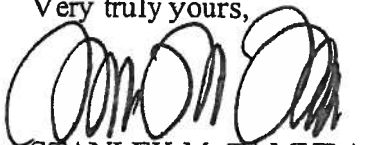
SUBJECT: Request for Determination of Access for TMK: (3) 3-4-03: 59  
Hawaii Belt Road, Proj. No. SDR 3(15)

We investigated your request and found that no direct access to the state highway is permitted from the subject lot, Parcel 59.

The Hawaii Belt Road is a controlled access facility with designated points where vehicles may enter and leave the highway. One such permitted access location is specifically provided for the 30 foot road reserve shown on the accompanying map. All vehicular access for Parcel 59 is intended through the 30 foot road reserve.

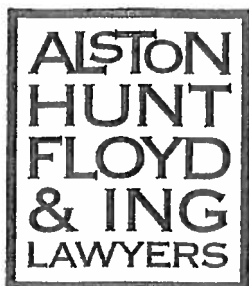
Should you have any questions, please call me or Mr. Robert Taira at telephone number 933-0498.

Very truly yours,

  
STANLEY M. TAMURA  
Hawaii District Engineer

RECEIVED  
LAND DIVISION  
HILO, HAWAII

2008 NOV -3 A 8:57



A LAW CORPORATION

**OAHU OFFICE**  
1001 Bishop Street  
Suite 1800  
Honolulu, HI 96813  
Phone: (808) 524-1800  
Fax: (808) 524-4591

**BIG ISLAND OFFICE**  
65-1241 Pomaikai Pl.  
Suite 2  
Kamuela, HI 96743  
Phone: (808) 885-6762  
Fax: (808) 885-6011

**MAUI OFFICE**  
2200 Main Street  
Suite 521  
Wailuku, HI 96793  
Phone: (808) 244-1160  
Fax: (808) 442-0794

[www.ahfi.com](http://www.ahfi.com)

July 13, 2011

2011 JUL 15 P 1:19

RECEIVED  
LAND DIVISION  
HILO, HAWAII

Mr. Kevin Moore  
Hawaii District Land Agent  
Department of Land and Natural  
Resources, Land Division  
75 Aupuni Street, Room 204  
Hilo, HI 96720

**Re: TMK (3) 3-4-03-59 / TMK (3) 3-4-03-11  
James Scanlon / Easement Over State Property**

Dear Kevin:

Thank you for speaking with me via telephone. I believe there may be some confusion with regard to our previous correspondence, and I hope this letter clarifies our reasoning as to why Mr. Scanlon possesses an access easement over the State property.

We do not dispute that the DLNR's statutory jurisdiction to manage and administer "public lands" does not include public land "being used for roads and streets" pursuant to HRS §§ 171-2(3) and 171-3.<sup>1</sup> Nor do we dispute that a "public highway" under HRS § 264-1 should be managed by the Department of Public Works.

However, Mr. Scanlon is not asserting that TMK (3) 3-4-03-11 is "public land being used for roads and streets" pursuant to the definitions of Chapter 171, or that it is a "public highway" under Chapter 264. Instead, Mr. Scanlon believes he possesses a right-of-way over TMK (3) 3-4-03-11 by operation of common easement law, either under the doctrine of implied dedication or by necessity. Although there happens to be a "road" on the area of State property upon which Mr. Scanlon possesses a right-of-way, we do not believe that this disturbs the DLNR's jurisdiction.

Under these circumstances, we do not believe there is a basis to charge Mr. Scanlon for the easement. We therefore agree with your suggestion

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<sup>1</sup> Our previous June 15, 2011 correspondence to your office contained a typographical error on pg. 2, and referenced HRS § 172 instead of § 171.

Mr. Kevin Moore

July 13, 2011

Page 2

that Mr. Scanlon's right-of-way be officially recognized through a standard perpetual, nonexclusive easement, but disagree that he should be charged for the easement. Please contact me or Brandon Segal so we can discuss the most efficient method for moving forward with your suggestion. I certainly appreciate your assistance.

Very truly yours,



Jade Lynne Ching  
Brandon M. Segal

JLC:BMS:lc

cc: Attorney General's Office - State of Hawai'i  
Department of Public Works - County of Hawai'i, Hilo  
Gordon Heit - DLNR, Land Division - Hilo